



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 01-70

December 31, 2003

Complaint of Fiber Technologies Networks, L.L.C., pursuant to G.L. c. 166, § 25A and 220 C.M.R. § 45.00 et seq. regarding access to poles owned or controlled by Shrewsbury's Electric Light Plant.

HEARING OFFICER RULING ON SELP'S MOTION FOR EXTENSION OF TIME TO FILE COMMENTS

On December 15, 2003, the Department of Telecommunications and Energy ("Department") requested comments from all parties on whether Fiber Technologies Networks, L.L.C.'s ("Fibertech") tariff, M.D.T.E. 3, issued on November 10, 2003 and effective December 10, 2003, in response to the Telecommunications Division's Clarification of Wholesale Tariffing Requirements (Aug. 12, 2003), would affect the Department's review of Fibertech's motion for reconsideration and clarification of the Department's interlocutory order on Fibertech's motion for summary judgment and appeals from discovery rulings. Fiber Technologies Networks, L.L.C., Interlocutory Order, D.T.E. 01-70 (Dec. 24, 2002). These comments were to be due on January 6, 2003.

On December 19, 2003, Shrewsbury's Electric Light Plant ("SELP") filed a motion for extension of time to file comments in response to the Department's request for comments. On December 23, 2003, filed an opposition to SELP's motion.

I. POSITIONS OF THE PARTIES

As grounds for its motion, SELP states that the current comment schedule presents a conflict with its counsel's schedule in ongoing court cases and vacation plans during the holidays, including Christmas and New Year's Day. Further, SELP argues that consistent with the Department's rules on order of presentation, 220 C.M.R. § 1.06(6)(f), Fibertech should be required to file a pleading first, and SELP should have an opportunity to file a responsive pleading to Fibertech's arguments as to why M.D.T.E. 3 would affect whether Fibertech is a "licensee" or is "engaged in the transmission of intelligence." Therefore, SELP requests that its deadline for filing comments be extended to the close of business on January 20, 2004.

Fibertech opposes SELP's motion, because Fibertech filed its complaint in this case on August 27, 2001, and the Department is outside the 180-day period in which "final action" is

required by 47 U.S.C. § 224(c)(3)(B)(i) and 220 C.M.R. § 45.08. Fibertech argues that it will be prejudiced by further delay. Fibertech also argues that the fact that SELP's counsel must contend with "ongoing court cases," which all counsel must face, does not present good cause for an extension. Fibertech adds that SELP should have conferred with Fibertech before filing the motion, in order to resolve schedule conflicts that Fibertech's counsel also faces. Finally, Fibertech argues that while the majority of SELP's motion is dedicated to arguing against the Department's request for comments, the Department may take administrative notice of any records and documents in its possession. 220 C.M.R. § 1.10(2), (3).

II. RULING

I find that while conflicts with unspecified "ongoing court cases" do not constitute good cause for a filing extension, the unavailability of SELP's counsel during the holiday period is good cause. SELP's motion is GRANTED. Because this proceeding is outside of the deadlines prescribed by 47 U.S.C. § 224(c)(3)(B) and 220 C.M.R. § 45.08., however, there will be no further extensions. Further, consistent with the Department's rules on order of presentation, see 220 C.M.R. § 1.06(6)(f), SELP shall file its comments after Fibertech has filed comments, but Fibertech will have an opportunity to reply. Therefore, I direct the parties to file comments according to the following schedule:

January 6, 2003	Fibertech Comments
January 20, 2003	SELP Comments
February 3, 2003	Fibertech Reply Comments

/s
Jesse S. Reyes, Hearing Officer